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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,901	12/11/2003	Robert J. Wilson	7560-0001	8457

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SACCO & ASSOCIATES, PA
P.O. BOX 30999
PALM BEACH GARDENS, FL 33420-0999

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,901

Applicant(s)

WILSON ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-11,14,15,18,20-24 and 26-31 is/are rejected.
- 7) ☒ Claim(s) 3,6,12,13,16,17,19 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/11/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

The claims are objected to because of the following informalities: the claims include grammatical errors such as missing words and punctuation errors. For instance, in claim 1, line 4, --of-- should be inserted after "end". This occurs in several other claims, please review each claim accordingly and make the appropriate corrections as required.

Claim Rejections - 35 USC § 112

Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the claim is directed to a method for securing a foundation form on a moisture barrier; however, neither the foundation form or the moisture barrier are being positively cited. The method is based upon and intended use. Thus, the form, moisture barrier, stake and plug must be positively claimed.

In reference to claim 24, the claim is only directed to an apparatus, and not the moisture barrier. In order to be given patentable consideration, the moisture barrier must be positively cited.

Double Patenting

The claims are provisionally rejected under the judicially created doctrine of double patenting over the claims of copending Application No. 10/733,909. This is a

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provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

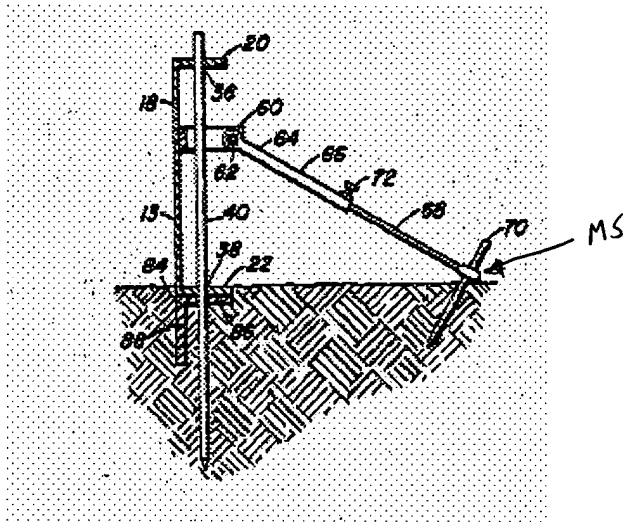
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,4,5,7-11,14,15,18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,785,606 to GREEN in view of US Patent

#2,978,840 to TATSCH. Regarding claims 1 and 14, GREEN discloses a method for securing a foundation form (10) including the steps of positioning one end of a form stake (40,70) in a mating structure (MS) of a plug (68), see below. GREEN discloses the basic claimed method except for the step of penetrating and forming a seal.

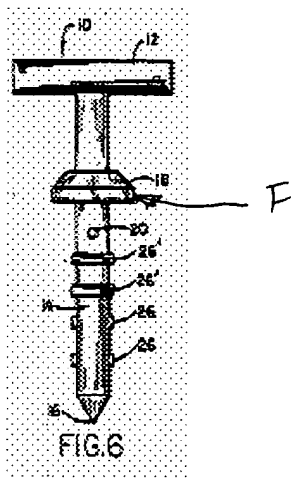


TATSCH teaches the use of a moisture barrier (27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of GREEN with the moisture barrier of TATSCH in order to separate the concrete from the ground beneath thereby preventing decomposition. Due to the fact that when considering the modification of GREEN in view of TATSCH, the moisture barrier (27), of TATSCH, would lie adjacent the ground wherein the stakes (40,70) of GREEN and would obviously penetrate the barrier (27) thereby forming a seal. Regarding claim 2, the step of forming the seal would obviously include driving the stake (40,70). In reference to claims 4,7,10,11,20 and 23, the method further includes selecting a mating structure includes a bore (unlabeled) in plug (68) and removing the stake (70) after the concrete has been poured. Regarding claims 5 and 18, the moisture barrier (27) forms

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the seal. In reference to claims 8 and 21, the step of securing includes securing the stake (40) to the form (10). Regarding claims 9 and 22, the securing step further includes driving at least a nail/screw (70) through a bore (unlabeled) in the plug (68). In reference to claim 15, the steps of positioning one end of a form stake (40,70) in a mating structure (MS) of a plug (68), see above.

Claims 24 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over either US Patent #5,564,232 to CALLAWAY or US Patent #6,202,368 to WALLACE, III. Regarding claim 24, both CALLAWAY and WALLACE, III discloses an apparatus including an elongate stake (10) and a plug (18) or (12) having a peripheral flange (F), see below, or (32) forming a seal. In reference to claim 26, the plug (12) of



WALLACE, III is slidably movable. Regarding claim 27, the plug (18) of CALLAWAY includes a flexible resilient member (22). In reference to claim 28, the plug (18) or (12) includes a mating structure (20,22) or (22,36). Regarding claim 29, the mating structure includes a bore (20) in CALLAWAY.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,564,232 to CALLAWAY or US Patent #6,202,368 to WALLACE, III, as applied to claim 24 above, and further in view of US Patent #911,504 to JAY. CALLAWAY discloses the basic claimed apparatus except for the flange having ridges and a channel. JAY teaches that it is known in the art to form a plug (14) with a flange (14) having ridges and a channel (12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of CALLAWAY with the flange of JAY in order to ensure that the plug is firmly set in the ground.

Allowable Subject Matter


Claims 3,6,12,13,16,17,19 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton
Examiner
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6/26/05